

APPEAL NO. 020371
FILED MARCH 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 17, 2002. On the sole issue, the hearing officer determined that the respondent's (claimant) C3 to C6 foraminal stenosis and degenerative changes are causally related to his compensable injury of _____. The appellant (carrier) appeals the determination on sufficiency grounds, and asserts the hearing officer erred in excluding testimony from the carrier's peer review doctor. The claimant urges affirmance.

DECISION

Affirmed.

We first address the carrier's assertion that the hearing officer erred in excluding testimony from the carrier's peer review doctor. The carrier requested to call its peer review doctor as a witness to expound upon his written opinion, which was admitted into the record of this proceeding, regarding the extent of the claimant's compensable injury. The hearing officer denied the request. The carrier did not raise its objection at the hearing nor make an offer of proof with regard to the excluded testimony. Any error in the exclusion of peer review doctor's testimony was, therefore, waived. Additionally, even assuming that it was error to exclude the testimony of the witness, we conclude that such error was harmless because the peer review doctor's written opinion was in evidence before the hearing officer.

The hearing officer did not err in determining that the claimant's C3 to C6 foraminal stenosis and degenerative changes are causally related to the compensable injury of _____. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the medical evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge